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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

LENA R.,

Petitioner,

v.

THE SUPERIOR COURT OF TULARE  
COUNTY,

Respondent,

TULARE COUNTY HEALTH AND HUMAN  
SERVICES AGENCY,

Real Party in Interest.

F043754

(Super. Ct. No. J-54577)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Charlotte A. Wittig,  
Referee.

Lena R., in pro. per., for Petitioner

No appearance for Respondent.

Kathleen Bales-Lange, County Counsel, and Bryan C. Walters, Deputy County  
Counsel, for Real Party in Interest.

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\* Before Dibiaso, Acting P.J., Buckley, J. and Cornell, J.

Petitioner, mother of minors J. and R., seeks in pro. per. an extraordinary writ (Cal. Rules of Court, rule 39.1B) to vacate the orders of the juvenile court terminating reunification services and setting a Welfare and Institutions Code section 366.26 hearing.<sup>1</sup> We will deny the petition.

### **STATEMENT OF THE CASE AND FACTS**

In February 2002, the Tulare County Health and Human Services Agency (agency) took then two-year-old J. into protective custody after the police conducted a warrant search of petitioner's home and found drug paraphernalia and uncapped needles in J.'s bedroom. Petitioner admitted to the responding social worker that she had a long history of drug use and was then addicted to "crank and weed." The agency filed a dependency petition alleging petitioner's drug use placed J. at risk of harm. (§ 300, subd. (b).) The juvenile court found the allegation true, assumed dependency jurisdiction and ordered a plan of reunification that required petitioner to, among other things, complete a residential drug treatment program and submit to random drug testing. On July 29, 2002, petitioner successfully completed residential treatment and was enrolled in the aftercare program. On August 28, 2002, the court conducted the six-month review hearing and ordered J. placed in petitioner's care within 60 days. On October 10, 2002, petitioner gave birth to R. and on October 25, 2002, J. was returned to petitioner's custody under a plan of family maintenance, which required petitioner to complete aftercare and continue to drug test.

However, petitioner's recovery was short-lived. In November 2002, she stopped attending aftercare and was terminated from the program. She also tested positive for drugs and then failed to drug test from mid-December 2002 through mid-February 2003. During this time, the case worker made repeated but unsuccessful attempts to visit

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

petitioner at her home to remind her of her drug testing requirements. On January 29, 2003, the agency removed J. and R. from petitioner's custody and filed dependency petitions on their behalf, alleging her drug abuse placed them at a substantial risk of harm. (§§ 387; 300, subds. (b) & (j).) On February 3, 2003, the court ordered the children detained and ordered the agency to refer petitioner for a new substance abuse evaluation and residential drug treatment if she agreed. The court set a combined jurisdictional hearing as to R. and 12-month review hearing as to J. for February 21, 2003.

On February 5, 2003, the caseworker met with petitioner to review her service plan. Petitioner informed the caseworker that she did not need residential treatment. She told the caseworker that she was participating in the New Visions after-care program, attending Alcoholics Anonymous/Narcotics Anonymous meetings and drug testing. However, the staff from New Visions reported otherwise. According to one staff member, petitioner attended two meetings in February 2003 but had not drug tested. Further, the staff suspected petitioner had relapsed, jeopardizing her eligibility for continued aftercare. In its report for the combined hearing, the agency recommended the court terminate services as to J. and offer petitioner six months of services as to R.

The combined jurisdictional/12-month review hearing was conducted on February 21, 2003. Petitioner admitted the allegations and the court assumed dependency jurisdiction over both children. The court set the matter for a combined disposition/contested 12-month review hearing on March 12, 2003.

Meanwhile, petitioner began the substance abuse evaluation and was initially recommended for outpatient drug treatment. On March 10, 2003, she misrepresented to her case worker that she was in full compliance with the requirements of her drug treatment when, in fact, she had not appeared for a February 4, 2003, drug test and missed two out of eight supervised visits. The caseworker requested increased drug

testing and, in a memorandum filed on March 11, 2003, informed the court that petitioner may be relapsing and in need of increased services.

The combined dispositional/contested 12-month review hearing was conducted on March 12, 2003. The court found petitioner had been provided reasonable services and continued them for another six months as to both children. Petitioner did not appeal from the court's findings and orders.

By early May 2003, petitioner was enrolled in intensive outpatient drug treatment at the recommendation of the program director. However, over the next two months, she relapsed, was readmitted for intensive outpatient drug treatment and relapsed a second time. On June 27, 2003, petitioner was referred for residential drug treatment.

On August 12, 2003, the court conducted the 18-month review as to J. and the 6-month review as to R. The parties submitted to an offer of proof that, from January 1, 2003 to the date of the hearing, the agency made numerous efforts to contact petitioner. Many were unsuccessful attempts to make face-to-face visits at her home. However, on several occasions, the agency succeeded in reminding petitioner of missed drug tests and in discussing her entire case plan with her. The parties also stipulated to the fact that petitioner requested outpatient treatment, specifically refusing residential treatment until her second positive drug test on June 27, 2003. After considering the evidence, the court found reasonable services were offered or provided. The court terminated reunification services for both children and set the section 366.26 hearing for December 5, 2003. This petition ensued.

## **DISCUSSION**

Petitioner argues the court erred in finding she was provided reasonable services. She claims she asked "numerous times for a higher level of treatment and [was denied]" and that she was never visited by the caseworker. However, the appellate record does not support her claims.

At the 6- and 18-month review hearings, the juvenile court must determine whether reasonable services were provided or offered to the offending parent. (§§ 366.21, subd. (e); 366.22, subd. (a).) Reasonable services were provided if the supervising agency offered services designed to remedy the problems requiring removal of the child and made reasonable efforts to facilitate compliance. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) Failure to challenge the reunification plan from an appealable order or modify it through a section 388 petition constitutes consent to its terms and waiver of the right to challenge the reasonableness of the content of the plan by direct appeal. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 47.) We review the juvenile court's finding reasonable services were provided or offered for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.)

In this case, the juvenile court removed J. and R. from petitioner's custody in January 2003 and ordered residential drug treatment *if petitioner agreed*. That was the plan she agreed to and she neither successfully petitioned to modify it nor appealed from the court's finding at the combined dispositional/contested 12-month review hearing that she was provided reasonable services. She therefore waived the right to claim that the plan as ordered was unreasonable.

Moreover, substantial evidence supports the court's finding the agency made reasonable efforts to implement petitioner's case plan. Despite petitioner's insistence that she was complying with outpatient drug treatment, she failed to drug test for months at a time. As a result, the caseworker requested more frequent drug testing and residential drug treatment. It wasn't until petitioner relapsed and tested positive in June 2003 that she too concluded that she needed the more intensive treatment available through the residential program. However, by that time, she had already failed in her rehabilitative efforts and she had exhausted the 18-month statutory limit on reunification for J. and the 6-month statutory limit on reunification for R. (§ 361.5, subds. (a)(2) & (a)(3).) Further, petitioner cannot claim that the caseworker failed to visit her. The record is replete with

evidence to the contrary and petitioner stipulated to the fact that the caseworker made numerous attempts to visit her in her home. We therefore conclude the court properly found petitioner was provided reasonable services. We find no error.

#### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.